

LAW OFFICES OF DALE K. GALIPO

Dale K. Galipo (SBN 144074)
dalekgalipo@yahoo.com
Cooper Alison-Mayne (SBN 343169)
cmayne@galipolaw.com
21800 Burbank Boulevard, Suite 310
Woodland Hills, California, 91367
Telephone: (818) 347-3333
Facsimile: (818) 347-4118

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SANDRA KIRKMAN, CARLOS
ALANIZ, individually and successors-
in-interest to JOHN ALANIZ, deceased,

Plaintiffs,

v.

STATE OF CALIFORNIA, RAMON
SILVA, and DOES 1-10, inclusive,

Defendants.

Case No. 2:23-cv-07532-DMG-SSC

*Honorable Dolly M. Gee
Hon. Mag. Judge Stephanie S.
Christensen*

**PLAINTIFFS' NOTICE OF
MOTION AND DAUBER MOTION
TO EXCLUDE TESTIMONY AND
EXHIBITS OF ROD ENGLERT,
NIKKI WAGNER AND CHERYL
KANZLER**

Judge: Dolly M. Gee
Hearing: March 25, 2025
Time: 2:00 p.m.
Dept.: Courtroom 8C

FPTC: March 25, 2025
Trial: April 15, 2025

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 18, 2025, at 2:00 p.m., in Courtroom 8C of the United States District Court for the Central District of California, at 350 West 1st Street, Los Angeles, California 90012, Plaintiffs, SANDRA KIRKMAN and CARLOS ALANIZ, hereby move for an order excluding, at the trial of the above-referenced matter, any evidence, testimony, argument, or reference to the expert testimony of Defendants' Forensic Consultants Rod Englert, Nikki Wagner, and Cheryl Kanzler

Statement of Local Rule 7-3 Compliance: This motion is made following the meet and confer between counsel for Plaintiffs and Defendants. The Parties were unable to resolve the issues brought up in this motion.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the records and files of this Court, and upon such other oral and documentary evidence as may be presented at the time of the hearing.

DATED: March 14, 2025

LAW OFFICES OF DALE K. GALIPO

By: /s/ Cooper Alison-Mayne
Dale K. Galipo, Esq.
Cooper Alison-Mayne
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants have retained Rod Englert as their forensics consultant. Mr.
4 Englert is expected to testify regarding forensic analysis and incident reconstruction.
5 However, his conclusion regarding Mr. Alaniz's position at the time of the shooting
6 is unsupported by the facts of this case, making it unreliable and unhelpful to the
7 trier of fact.

8 Along with his partners, Nikki Wagner and Cheryl Kanzler, Mr. Englert is
9 improperly invading the province of the jury by offering unsupported opinions on
10 critical factual issues, including:

- 11
 - What position Mr. Alaniz's body was in at the time of the shooting.
 - 12 • Whether he had an object in his hands in the moments before the
13 shooting.
 - 14 • Whether he still had that object at the time of the shooting or dropped it
15 after being tased.
 - 16 • Whether he turned away from the officers after being tased, and if so,
17 to what extent.

18 Additionally, Mr. Englert provides opinions outside the scope of his expertise,
19 which should also be excluded. Plaintiffs seek to preclude the admission of Mr.
20 Englert's expert testimony at trial and any reference to his opinions.

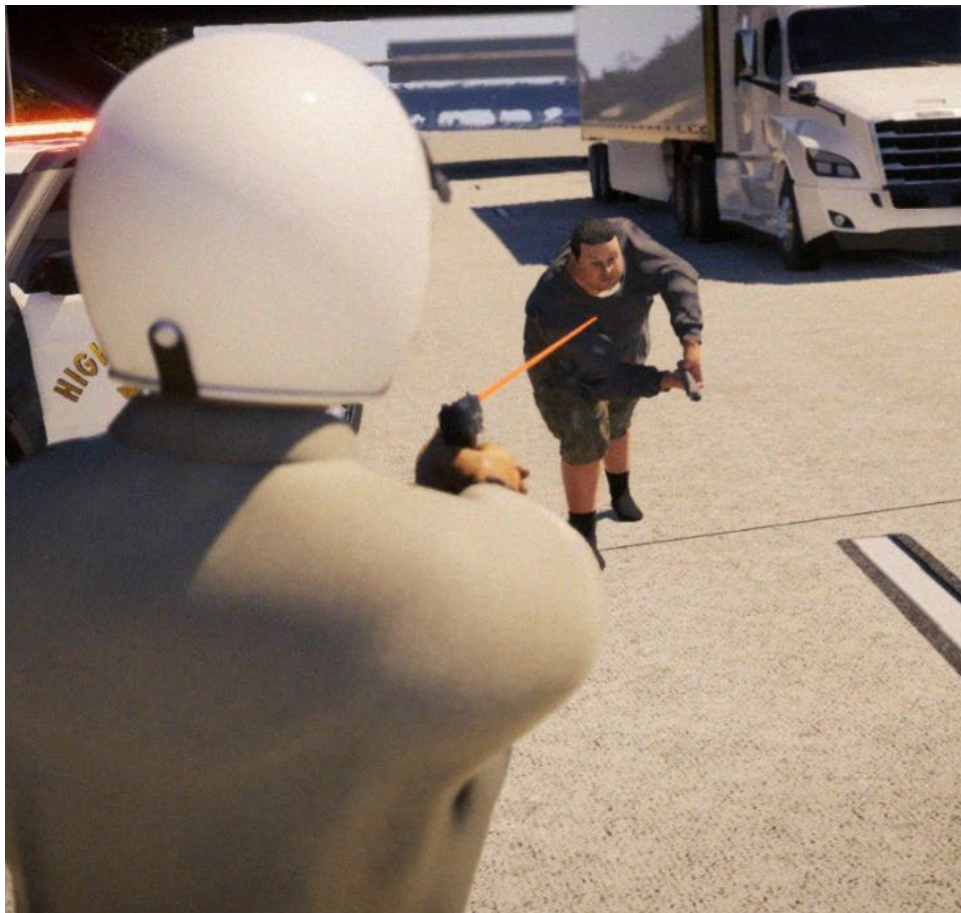
21 **II. MR. ENGLERT'S OPINIONS ARE UNRELIABLE AND SHOULD**
22 **THEREFORE BE EXCLUDED**

23 Federal Rule of Evidence 702 permits expert testimony only if it is both
24 relevant and reliable, meaning it must be based on sufficient facts or data, derive
25 from reliable principles and methods, and properly apply those principles to the
26 facts of the case. Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S.
27 579, 589 (1993). The trial court acts as a "gatekeeper" to ensure that expert
28

1 testimony meets these standards before it is admitted. *Elsayed Mukhtar v. Cal. State*
2 *Univ., Hayward*, 299 F.3d 1053, 1063 (9th Cir. 2002), *amended by* 319 F.3d 1073
3 (9th Cir. 2003). Mr. Englert's opinions fail to meet these requirements and should be
4 excluded because they lack sufficient factual support, rely on speculative
5 reconstructions, and contradict his own statements.

6 Internal Inconsistencies and Contradictions

7 Mr. Englert's testimony is internally inconsistent and contradicts established
8 evidence. As depicted below, Englert's animation depicts Alaniz at the time of the
9 shots as having his hands raise up, grasping an object in both hands, and looking in
10 Officer Silva's direction.



25 Declaration of Cooper Alison-Mayne, Exhibit C, Rod Englert's February 10, 2025
26 expert report at 29; see also Alison-Mayne Decl., Exhibits D, E, and F, [Kirkman
27 Animation Videos]
28

1 However, in his deposition, Englert admitted that no video evidence captures
2 the decedent's body at the time of the second shot because Officer Silva's hands
3 obstructed the view from his body-worn camera. Therefore, he admitted he does not
4 know what position Alaniz's arms would have been in at the time of the shots:

5 Q: Would you agree that there's no video evidence showing the
6 decedent's body **at the time of the second shot**, because the video
was obstructed by Officer Silva's hands?

7 A: So in the last three-quarters of a second, no, you cannot see what
8 happened.

9 Q: So your opinion that the decedent was still aiming at Officer Silva
10 is an inference of some kind, based on other information, since we
11 don't have the direct video of that moment?

12 A: In that very short period of time, in like, I guess, even half a
second, for him to change position, all I know is he's canted and he's
going down. **And what the position of his arms are at that point, I
don't know.**

13 Alison-Mayne Decl., Exhibit A, Englert Deposition at 36–37.)

14 Englert further admits that he had no basis for placing the object in Alaniz's
15 hand at the time of the shots. If Alaniz turned away from the taser and started going
16 down, there is no evidence that he did not lose contact with the object in his hands
17 before the shots, potentially leaving him unarmed and turning away from the
18 officers when Silva shot him. Englert himself admits that no one can determine this
19 with certainty:

20 Q: So what's the specific evidence that it was in his hand at the time
21 he fell versus a moment before, when he hadn't quite fallen yet?

22 A: The one second when we know that it was in his hands based
23 upon the body-worn camera, and in that one second we know that
24 what causes him to go down are gunshots to his person. And in that
25 one second, **you can't have any non-display or display of the
weapon, because we don't know exactly during that one second
that he's shot and going down, which is all very, very, very fast.
Nobody knows.**

26 Alison-Mayne Decl., Exhibit A, Englert Deposition at 61–62.)

27 Even looking prior to the moment of the shots, his decision to place an object in
28 Alaniz's hands is questionable. Englert claims that he can see an object in the video,

1 forming part of the basis for his reconstruction. Alison-Mayne Decl., Exhibit A,
2 Englert Deposition at 7.) But Defendants’ own video expert, Mr. Blake, directly
3 contradicts this claim, stating that no such object is visible in the video Alison-
4 Mayne Decl., Exhibit B, Blake Deposition at 38.). This disagreement between
5 Defendants’ own experts further demonstrates the speculative and unreliable nature
6 of Englert’s opinions and reconstruction animation.

7 Speculative and Prejudicial Reconstruction

8 Englert's reconstruction is not only speculative but highly prejudicial. His
9 report includes a still image depicting Alaniz holding an object as if it were a gun
10 and aiming at Silva—despite a lack of video evidence supporting this portrayal. This
11 reconstruction is purely conjectural and misleading, as it presents an unverified
12 scenario as fact. In reality, the available evidence—including video footage and the
13 autopsy—suggests the opposite. In the final frames of the video, Alaniz appears to
14 be turning away from the officers, and the trajectory of the gunshots from his right
15 side indicates he had already turned at the time he was shot. Englert’s presentation,
16 therefore, improperly influences the jury by portraying speculation as fact—an issue
17 made even more troubling by his own admission that he cannot confirm Alaniz’s
18 arm position or whether he was still holding an object when he was shot.

19 The animation is also simply inaccurate compared to the actual events as
20 depicted in the video. For example, Exhibit G shows a frame from a side-by-side
21 exhibit of the video next to the reconstruction animation. Alison-Mayne Decl.,
22 Exhibit G. In this frame, the video shows Van Dragt with his right arm by his hip,
23 but the animation shows him with his arms in a shooters stance. If Mr. Engert and
24 his team cannot accurately reconstruct events that are clearly depicted in a video,
25 how can we believe that they can accurately reconstruct events about which we have
26 less information, like the critical moments before Alaniz is shot?

1 Mr. Englert's report also lacks the necessary transparency and documentation
2 required for a reliable forensic analysis. In his February 10 report, he claims to have
3 tested a range of body positions to determine the most probable one based on the
4 physical evidence. Alison-Mayne Decl., Exhibit C, Englert's February report at 25
5 ("Throughout the reconstruction, a range of body positions were tested to determine
6 the most probable body positioning given the physical evidence."). However,
7 *Englert provides no images, documentation, or rationale for why he selected one*
8 *scenario over other possible scenarios.* Without information about the alternative
9 positions, he purportedly considered and rejected for undisclosed reasons, there is
10 no way to evaluate his methodology or conclusions. This omission renders his
11 reconstruction speculative and biased rather than grounded in scientific rigor.

12 Given these significant flaws, Englert's testimony should be excluded under
13 Rule 702. His opinions lack a sufficient factual basis, rely on speculation rather than
14 sound forensic principles, and improperly usurp the jury's role in determining key
15 disputed facts. Allowing him to present his unreliable reconstruction would not
16 assist the jury in reaching a verdict based on actual evidence but would instead
17 prejudice the proceedings in favor of the Defendants. Accordingly, his opinions
18 should be deemed inadmissible and excluded from trial.

19 **III. MR. ENGLERT'S OPINIONS THAT ARE SIMPLY A BIASED**
20 **RECITATION OF THE FACTS SHOULD BE EXCLUDED AS**
21 **OUTSIDE THE SCOPE OF HIS EXPERTISE**

22 Englert's opinions improperly invade the province of the jury by making
23 credibility determinations and speculative conclusions rather than providing
24 objective forensic analysis. He asserts that Alaniz "failed to comply" with officers'
25 commands, despite video evidence showing Alaniz raising his hands in response to
26 their orders. He claims that six "pops" were heard on the body-worn camera, though
27 only five gunshots are audible, and he mischaracterizes the distinct sound of the
28

1 taser. He also concludes that the taser had “no apparent effect” on Alaniz’s
2 movement, yet the video suggests otherwise.

3 Englert further states that Alaniz was “holding an object with both hands” and
4 in a “shooting stance,” despite the fact that the video does not clearly show an
5 object. Even the defense’s own expert concedes that nothing can definitively be seen
6 in Alaniz’s hands. His claim that Alaniz’s stance was “consistent with a shooting
7 stance” is outside of his expertise and is a lay opinion, as he is no more qualified
8 than the jury to determine what posture Alaniz was in, based on the video.
9 Additionally, he asserts that Officer Silva’s belief that Alaniz was armed is
10 “consistent with the body-worn camera video,” despite the fact that the video does
11 not confirm Alaniz was holding anything.

12 These statements do not constitute expert forensic analysis but rather a biased
13 recitation of the facts designed to favor the defense. Englert’s role as an expert
14 witness does not grant him the authority to determine credibility, interpret
15 ambiguous evidence in favor of one party, or draw legal conclusions—those are
16 matters reserved for the jury. His testimony in this regard is not based on scientific
17 principles or specialized expertise but instead on subjective interpretation, making it
18 inadmissible under Rule 702.

19 For these reasons, Plaintiffs respectfully request that the Court exclude Mr.
20 Englert’s testimony on these matters, as these opinions exceed the proper scope of
21 expert opinion and could improperly influence the jury’s fact-finding role.

22 **IV. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully request that this Court
24 exclude the testimony and exhibits of Rod Englert, and his partners, Nikki Wagner
25 and Cheryl Kanzler. Their opinions are speculative, unreliable, and prejudicial,
26 failing to meet the standards of admissibility under Federal Rule of Evidence 702.

1 Their incident reconstruction, in particular, is internally inconsistent, lacks factual
2 support, and improperly presents an unverified narrative as fact.

3 Allowing these experts to testify would not aid the trier of fact but instead
4 mislead and prejudice the proceedings in favor of the Defendants. Given these
5 deficiencies, Plaintiffs respectfully request that this Court grant their motion to
6 exclude the testimony and exhibits of Rod Englert, Nikki Wagner, and Cheryl
7 Kanzler in their entirety.

8 Respectfully submitted,

9
10 DATED: March 14, 2025

LAW OFFICES OF DALE K. GALIPO

11
12
13 By: /s/ Cooper Alison-Mayne
14 Dale K. Galipo, Esq.
15 Cooper Alison-Mayne
16 *Attorneys for Plaintiffs*
17
18
19
20
21
22
23
24
25
26
27
28